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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/444,889	11/22/1999	MICHAEL G. MIKURAK	AND1P367	9216

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EXAMINER

VAN DOREN, BETH

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/444,889

Applicant(s)

MIKURAK, MICHAEL G.

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/29/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17,18,21-23,26-28 and 31-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17,18,21-23,26-28 and 31-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The following is a final office action in response to communications received 06/29/04. Claims 17, 21, 22, 26, 27, and 31 have been amended. Claims 32-37 have been added. Claims 19, 20, 24, 25, 29, and 30 have been canceled. Claims 17-18, 21-23, 26-28, and 31-37 are now pending in this application.

Response to Amendment

2. Applicant's amendments to claims 17, 22, and 27 are not sufficient to overcome the 35 U.S.C. 112, second paragraph, rejections. Therefore, these rejections have been reasserted below, incorporating the amendments made to the claims.

Affidavit/Declaration

3. The Declaration filed on 06/29/04 under 37 CFR 1.131 has been considered but is ineffective to overcome the Sekizawa (U.S. 6,430,711) reference.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Sekizawa reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). Furthermore, MPEP § 715.07 states that the essential thing to be shown under 37 CFR 1.131 is priority of the invention, done by any satisfactory evidence of facts. Facts, not conclusions, must be alleged. A general allegation that the invention was completed prior to the date of the reference is not sufficient. *Ex parte Saunders*, 1883 C.D. 23, 23 O.G. 1224 (Comm'r Pat. 1883). Similarly, a declaration by the

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inventor to the effect that his or her invention was conceived or reduced to practice prior to the reference date, without a statement of facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37 CFR 1.131.

In the present case, Applicant has asserted that he realized the maintenance and service processes of his work could be used across industries at a date prior to 01/06/1999. However, Applicant has not provided any proof of this conception, such as by testimony, demonstrative evidence, etc., that would establish a conception date prior to the Sekizawa patent.

Furthermore, the evidence submitted in the present case is insufficient to establish diligence from a date prior to the date of reduction to practice of the Sekizawa reference to either a constructive reduction to practice or an actual reduction to practice. Applicant has asserted that he realized the invention at a date prior to 01/06/1999 and then sought to patent the invention, the application filed 11/22/1999, but has provided no facts or evidence that show what occurred between these two dates.

For these reasons, the declaration submitted by the Applicant is considered ineffective to overcome the Sekizawa reference.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-18, 21-23, 26-28, and 31-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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5. Claim 17 does not distinctly point out and claim the subject matter that the applicant regards as his invention because the terms of the claim and the elements do not interrelate in a manner that clearly depicts what the applicant regards as his invention. The preamble of the claim states that disclosed is “a method for a framework manager to provide maintenance and service [...] between a first framework user and a second framework user such as service providers, vendors, resellers, manufacturers and the like”. The framework manager is said to cause the elements of the claim. Element (a) states that operation of the framework is monitored, the operation selected from server processes, disk space, etc. Element (b) recites that a notice is received from a first framework user for recommended maintenance. Element (c) recites that a request for maintenance is received from at least one service provider or the like (second framework user) that uses the network. Elements (d) and (e) relate to scheduling and transmissions that occur with regards to the first user and the service provider. Element (f) discusses performing the scheduled maintenance/service by updating “items” selected from the group consisting of tax rates, pricing, merchandizing content, and currency exchange rates, synchronizing these items with external data, and sending feedback to framework users. It is unclear as to how step (a) relates to the steps (b)-(f) of the claims since it appears that the maintenance has to do with updating data. Second, it is unclear as who the “framework users” in step (f)(iii) are since the preamble and steps (b)-(e) only discuss a first framework user and a second framework user. It is further unclear how step f(iii) relates the steps f, f(i), and f(ii) since it is unclear how sending feedback requests to generic users of the network accomplishes performing requested and scheduled maintenance or the updating of internal data items.

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Therefore, since element (a) does not appear to relate as steps to the method of (b)-(f), and since element f(iii) does not appear to relate to elements (f), f(i), and f(ii), claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. Since claims 18, 21, 32, and 33 depend on claim 17, claims 17, 18, 21, 32, and 33 are also rejected under 35 U.S.C. 112, second paragraph.

6. Claims 22 and 27 contain the same deficiencies as claim 17 and are therefore rejected under 35 USC § 112, second paragraph for the reasons explained above. Claims 23, 26, 28, 31, and 34-37 are dependant on claims 22 and 27 and therefore are also rejected under 35 U.S.C. 112, second paragraph.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-18, 21-23, 26-28, and 31-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sekizawa (U.S. 6,430,711) and Haluska (U.S. 5,638,519).

8. As per claim 17, Sekizawa discloses a method for a framework manager to provide maintenance and service for a network-based supply-chain framework between a first framework user and a second framework user such as service providers, vendors, resellers manufacturers and the like, comprising:

causing the framework manager using a network to:

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(a) monitor at least one operation of the framework selected from the group consisting of server processes, disk space, memory availability, CPU utilization access time to a server, and a number of connections in a network-based supply chain for efficient system-operation and problem prevention (See at least figure 20 and column 2, lines 50-67, column 3, lines 1-25 and 45-55, column 4, lines 40-65, column 5, lines 40-50, and column 6, lines 55-65, wherein at least one operation of the framework is monitored, including memory availability);

(b) receive from a first framework user at least one notice for recommended maintenance and service (See at least column 9, lines 30-40, column 19, lines 1-15, and column 26, lines 10-20, which discloses a first framework user. See at least column 2, lines 50-67, column 3, lines 1-25, column 4, lines 50-65, column 5, lines 40-50, and column 6, lines 55-65, wherein the manufacturer would recommend maintenance and service using the network);

(c) receive from a second framework user at least one request for maintenance and service (See at least figure 28 and column 2, lines 50-67, column 3, lines 1-28, column 4, lines 50-65, column 5, lines 5-10 and 40-50, and column 6, lines 1-6 and 55-65, column 7, lines 25-50, and column 8, lines 1-17, wherein the second framework user requests maintenance and service);

(d) schedule maintenance and service using the at least one notice and the at least one request (See at least column 2, lines 50-67, column 3, lines 1-25, column 4, lines 50-65, column 5, lines 40-50, and column 6, lines 55-65, column 7, lines 59-67, and column 8, lines 1-36, wherein maintenance and service is scheduled using the request and notice);

(e) transmit the schedule to at least the first framework user who recommended maintenance and service and at least the second framework who requested maintenance and service (See at least figure 28 and column 2, lines 50-67, column 3, lines 1-28, column 4, lines

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50-65, column 5, lines 40-60, and column 6, lines 55-65, column 7, lines 59-67, and column 8, lines 1-36, wherein the scheduling is made known to the manufacturer and the second framework user via the status views of the network or direct communication);

(f) perform scheduled maintenance and service comprising the steps of:

(i) update internal data items stored in the framework (See at least column 4, lines 5-25 and 40-62, column 7, lines 35-50, and column 8, lines 1-7, wherein the internal data items of the local framework are updated);

(ii) synchronize external data stored separately from the network-based supply chain with internal data stored on the network-based supply chain (See at least column 4, lines 5-25 and 40-62, column 7, lines 35-50, and column 8, lines 1-7, wherein the external, global, data and the local data is synchronized); and

(iii) send feedback response requests to framework users of the network-based supply-chain framework (See at least figures 4, 9-12, and 30, column 7, lines 59-67, column 19, lines 35-45, column 20, lines 40-67, column 21, lines 1-10, column 22, lines 25-55, column 23, lines 1-30, column 33, lines 35-65, column 34, lines 55-67, and column 35, lines 1-25, wherein the user is given a change request and there is a mail box for receiving change requests. Also, the users can input information requested by the system, such as error information, status information, customer information, etc.).

However, Sekizawa does not expressly disclose and Haluska discloses:

(f) update internal data items stored in the framework selected from the group consisting of merchandising content, currency exchange rates, tax rates, and pricing information

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(See at least figures 4-6, column 3, lines 25-40 and 45-65, column 5, lines 1-25, column 7, lines 35-60, and column 11, lines 35-65, wherein pricing information is updated);

Both Haluska and Sekizawa disclose manufacturers providing services and supplies to users of the network. Sekizawa further discloses the ability to update internal information such as the customer information. It is well known in marketing and sales to customize merchandising content and/or pricing information to the customer and the customer's information. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to update at least the merchandising content and/or the pricing information based on this change in customer information in order to more efficiently meet the needs of the customers of the system by maintaining universal and updated information accessible by all users of the network that correctly matches the needs/information about the customers. See at least column 2, lines 50-67, of Haluska and column 2, lines 45-67, of Sekizawa.

9. As per claim 18, Sekizawa teaches a method further comprising the framework manager using the network to perform load-balancing services that initiate and stop processes as utilization levels vary in the network-based supply chain (See at least column 6, lines 10-35, which discloses load balancing).

10. As per claim 21, Sekizawa teaches a method, where the step of performing scheduled maintenance and service-includes using the network prior to the synchronization of the external data to perform a search for the internal data in the network-based supply chain (See at least column 4, lines 5-25 and 40-62, column 7, lines 35-50, and column 8, lines 1-7, wherein the status data of the local machines are searched prior to the synchronization).

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11. As per claim 32, Sekizawa teaches a method wherein the step of performing scheduled maintenance and service includes indexing received feedback from framework users (See at least figures 4, 9-12, and 30, column 7, lines 59-67, column 19, lines 35-45, column 20, lines 40-67, column 21, lines 1-10, column 22, lines 25-55, column 23, lines 1-30, column 33, lines 35-65, column 34, lines 55-67, and column 35, lines 1-25, wherein the user is given a change request, the system has a mail box for receiving change requests, and the system saves this data).

12. As per claim 33, Sekizawa teaches a method wherein the internal data stored in the network-based supply-chain framework is indexed according to each framework user's profile (See at least figures 4, 9-12, and 30, column 7, lines 59-67, column 19, lines 35-45, column 20, lines 40-67, column 21, lines 1-10, column 22, lines 25-55, column 23, lines 1-30, column 33, lines 35-65, column 34, lines 55-67, and column 35, lines 1-25, wherein information is entered in the system and saved based on the user profile. For example, the user is given a change request, the system receives change requests, and the system saves this data with the profile of the user).

13. As per claims 22-23, 26, and 34-35, claims 22-23, 26, and 34-35 recite equivalent limitations to claims 17-18, 21, and 32-33, respectively, and are therefore rejected using the same art and rationale as applied in the rejection of claims 17-18, 21, and 32-33, respectively.

14. As per claims 27-28, 31, and 36-37, claims 27-28, 31, and 36-37 recite equivalent limitations to claims 17-18, 21, and 32-33, respectively, and are therefore rejected using the same art and rationale as applied in the rejection of claims 17-18, 21, and 32-33, respectively.

Response to Arguments

15. Applicant's arguments with regards to the rejections based on Sekizawa (U.S. 6,430,711) and Haluska (U.S. 5,638,519) have been fully considered, but they are not persuasive. In the

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remarks, Applicant argues that (1) Sekizawa does not teach or suggest submitting feedback requests to the framework users in the course of performing maintenance and (2) that Haluska does not teach or suggest integrating the solicitation or receipt of feedback information from individuals using the network.

In response to argument (1) of the Applicant, Examiner respectfully disagrees. Examiner first points out that the claim recites “a method for a framework manager to provide maintenance and service for a network-based supply-chain framework between a first framework user and a second framework [...], comprising: causing the framework manager using a network to:”, “(f) perform scheduled maintenance and service comprising the steps of” updating internal data items stored in the framework, synchronizing external data stored separately with internal data, and “(iii) send[ing] feedback response requests to framework users of the network-based supply-chain framework”. Examiner points out that is unclear, as discussed above, how element f(iii) relates to steps f, f(i), and f(ii) or how element f(iii) relates to the rest of the claim. First, there is no prior recitation of “framework users” in claims 17, 22, and 27 except for “first framework user” and “second framework user”. Second, there is no clear connection as to how sending feedback requests to generic “framework users” accomplishes the task of performing the requested scheduled maintenance. For examination purposes, the “framework users” that receive the feedback requests have been construed as any user of the network. This interpretation has been used in the rejections above. Sekizawa discloses the limitation by discussing sending a user of the network a change request and the user replying to the change request, thereby updating the records of the system. The user of Sekizawa is a customer associated with maintenance requests. See at least column 19, lines 35-45, column 20, lines 40-67, column 21, lines 1-10, column 22,

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lines 25-55, column 23, lines 1-30, column 33, lines 35-65, column 34, lines 55-67, and column 35, lines 1-25.

In response to argument (2) of the Applicant, Examiner respectfully disagrees. Examiner did not rely on Haluska to teach the feedback limitations of the claims. Examiner maintains the rejections set forth above and the response to argument 1.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bellini et al. (U.S. 5,974,395) discloses enterprise planning in a supply chain network.

Ballantine et al. (U.S. 6,446,123) teaches identifying problems in a network and providing maintenance to repair the problem.

Barker (U.S. 6,065,017) discloses identifying errors in databases and using an external tool to repair the data.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (703) 305-3882. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

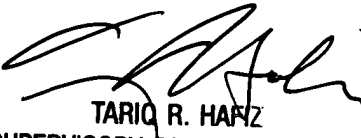
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end

bvd

September 21, 2004


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